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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

VINIQUIA REED,

Defendant and Appellant.

B299338

(Los Angeles County
Super. Ct. No.
MA070803)

APPEAL from an order of the Superior Court of Los Angeles County, Lisa Strassner, Judge. Dismissed.

Melissa J. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Stephanie C. Brennan, Supervising

Deputy Attorney General, and Nathan Guttman, Deputy Attorney General, for Plaintiff and Respondent.

Following a jury trial, defendant Viniquia Reed (defendant) was convicted of assault with a firearm and discharge of a firearm with gross negligence. We affirmed the judgment of conviction on direct appeal. (*People v. Reed* (Apr. 2, 2019, B285307) [nonpub. opn.] (*Reed I*)). After we filed our opinion in *Reed I*, and while defendant’s petition for review to our Supreme Court was pending, defendant filed a motion in the trial court seeking to vacate certain fines and fees under *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*). The trial court denied that motion and we now consider whether we have jurisdiction to decide defendant’s appeal from that denial.

I. BACKGROUND

Defendant was convicted of assault with a firearm (Pen. Code,¹ § 245, subd. (a)(2)) and discharge of a firearm with gross negligence (§ 246.3, subd. (a)) in August 2017. The trial court sentenced her to serve two years in state prison on the first count and imposed a \$40 court operations assessment (§ 1465.8(a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373), a \$600 restitution fine (§ 1202.4(b)), and a \$600 parole revocation fine (§ 1202.45). Defendant’s sentence on the second count, stayed pursuant to section 654, included a two-year prison term, a \$40 court operations assessment, and \$30 criminal conviction assessment.

In *Reed I*, defendant argued the trial court erred in excluding defense character witness testimony, admitting certain impeachment evidence, and denying a defense *Batson/Wheeler*

¹ Undesignated statutory references that follow are to the Penal Code.

motion. The appeal was fully briefed in November 2018, and both sides waived oral argument scheduled for January 2019. On January 8, 2019, the day set for oral argument in *Reed I*, the Court of Appeal decided *Dueñas*, *supra*, 30 Cal.App.5th 1157. We filed our opinion in *Reed I* in April 2019. Our Supreme Court denied review in July 2019, and the remittitur issued a few days later.

In May 2019, while her petition for Supreme Court review was pending, defendant filed a motion in the trial court to vacate the court operations assessments and the criminal conviction assessments and to stay the restitution fine unless and until the prosecution proved her ability to pay under *Dueñas*. She filed the motion relying on section 1237.2, a statute that, as we shall discuss, gives a trial court jurisdiction under limited circumstances to correct an error in the imposition of fines and fees notwithstanding the filing of a notice of appeal.

The trial court denied defendant's section 1237.2 motion on two grounds. First, the court found defendant forfeited her *Dueñas* claims by failing to object to the imposition of the challenged fines and fees at the time of sentencing. Second, the trial court stated defendant's premise that it had not considered her ability to pay at sentencing was "faulty."

II. DISCUSSION

Section 1237.2 is an exception to the rule that "the filing of a notice of appeal ordinarily divests the trial court of jurisdiction over the case." (*People v. Torres* (2020) 44 Cal.App.5th 1081, 1086 (*Torres*)). Defendant's trial court motion for correction of fines and fees was not properly brought under section 1237.2, however, which means the trial court lacked jurisdiction to rule

on the motion and defendant's appeal from that ruling must be dismissed.

Section 1237.2 provides "[a]n appeal may not be taken by the defendant from a judgment of conviction on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be made informally in writing. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs upon the defendant's request for correction. *This section only applies in cases where the erroneous imposition or calculation of fines, penalty assessments, surcharges, fees, or costs are the sole issue on appeal.*" (Emphasis added.)

Section 1237.2's "primary purpose . . . is to encourage and facilitate the prompt and efficient resolution in the trial court of challenges to fines, assessments, and fees that would otherwise be asserted on direct appeal; and the statute's second sentence furthers that purpose by giving trial courts the power to resolve such challenges notwithstanding the pending appeal." (*Torres, supra*, 44 Cal.App.5th at 1087 [reviewing the statute's legislative history].) The last sentence of section 1237.2 recognizes this purpose is not served by permitting a criminal defendant to challenge fines and fees in the trial court when a pending appeal raises additional issues. "In this situation, a defendant must seek relief in the Court of Appeal for any issue regarding the imposition or calculation of fines, assessments, and fees,

including, if necessary, by requesting leave to file a supplemental brief. [Citation.] The Court of Appeal then decides *all* the issues of the case, preventing piecemeal litigation in separate forums. [Citation.]” (*People v. Jenkins* (2019) 40 Cal.App.5th 30, 38, review granted Nov. 26, 2019, S258729.)

In *Reed I*, defendant raised several issues unrelated to the *Dueñas* claims raised in this appeal. Rather than request an opportunity to submit a supplemental brief during the nearly three months between the Court of Appeal’s decision in *Dueñas* and our filing the opinion in *Reed I*—which would have enabled this court to resolve all of her claims in one appeal—defendant waited another month to raise her *Dueñas* claims in the trial court. Section 1237.2 makes no provision for continuing trial court jurisdiction under these circumstances. Because the trial court lacked jurisdiction to rule on defendant’s motion under section 1237.2, we must dismiss her appeal. (See *Torres, supra*, 44 Cal.App.5th at 1084 [“If the trial court does not have jurisdiction to rule on a motion to vacate or modify a sentence, an order denying such a motion is nonappealable, and any appeal from such an order must be dismissed”].)

DISPOSITION

The appeal is dismissed.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.